of the State have not been uniform, but it is conceded, and is evident upon an examination of the more recent decisions, that the term does not include antecedent creditors, or subsequent creditors whose claims are acquired with notice of the unrecorded mortgage, but does include subsequent creditors, without notice, who by their diligence secure a specific lien upon the property, as by execution or attachment, before the mortgage is recorded. *Baldwin* v. *Crow*, 86 Kentucky, 679; *Wicks* v. *McConnell*, 102 Kentucky, 434; *Clift* v. *Williams*, 105 Kentucky, 559; *Bowles' Ex'r* v. *Jones*, 123 Kentucky, 395; *Swafford's Adm'r* v. *Asher*, 105 S. W. Rep. 164. And so, the question for decision is reduced to this: Does the term include subsequent creditors, without notice, who have not secured such a lien?

No case in that court has been called to our attention, and none has been found by us, in which this question was presented for decision and decided; but in two of the later cases there are expressions bearing thereon which are respectively relied upon here. Thus, in *Wicks Bros.* v. *McConnell*, *supra*, where the prior cases were reviewed with the evident purpose of extracting a general and guiding rule, it was said: "On the one hand, the unrecorded lien is upheld as against creditors who cannot be presumed to have given credit upon the faith of the property held in lien. On the other hand, creditors who may be presumed on such faith to have given credit are protected as against the secret lien *in the rights which they secure by their diligence in the levy of their execution or attachment.*" (Italics ours.) And in *Swafford's Adm'r* v. *Asher*, *supra*, it was said: "As the mortgage was not recorded, *it would, of course, not be valid as to creditors whose debts were subsequently created;* but as to those whose debts were created prior to the purchase of the teams and the mortgage upon them the lien is valid, although not recorded as required by § 496 of the Kentucky Statutes of 1903, and,

as said before, *there is nothing to show that any debt of the estate was created after the purchase of the teams, except that of appellant, who had actual notice.*" As *Wicks* v. *McConnell* was cited as sustaining this statement, it is not probable that the court regarded it as overruling or departing from what had been said in that case; and this view receives added support from the fact that the opinion in *Swafford's Adm'r* v. *Asher* was marked by the court "Not to be officially reported." These considerations, coupled with the further fact that in cases such as *Bowles' Ex'r* v. *Jones, supra*, where subsequent creditors prevailed over such a mortgagee, the court was careful to state, not only that the claims of the creditors arose after the date of the unrecorded mortgage, but also that the creditors had obtained attachment or other liens upon the mortgaged property before the mortgage was recorded, are persuasive that what was said in *Wicks Bros.* v. *McConnell* should be accepted as reflecting the true construction of § 496, in the absence of some more positive and direct ruling upon the subject by the Court of Appeals of the State. Such was the view of the Circuit Court of Appeals, and we are at least unable to say that it was wrong. It follows that, as here the subsequent creditors had not fastened any lien upon the property covered by the mortgage prior to the proceedings in bankruptcy by which the title passed to the trustee, the mortgage, although unrecorded, was valid and effective against them.

Decree affirmed.